

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FLAP 2001, INC. t/a/d/b/a	:	
FLAPDOODLES	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	
	:	
KAMIKAZE KIDS ENTERPRISES,	:	
INC.	:	
	:	
AND	:	
	:	NO. 02-3265
KAMIKAZE KIDS, INC.	:	
	:	
Defendants	:	

O R D E R

AND NOW, this day of August, 2002, upon consideration of Plaintiff's Motion for Default Judgment against Defendant, Kamikaze Kids, Inc., it is hereby ORDERED that Plaintiff's Motion is DENIED without prejudice. Pursuant to Federal Rule of Civil Procedure 55(b)(2) the Court may enter judgment against a defendant whose default has been entered by the Clerk of the Court. "Mere entry of default, however, does not entitle a plaintiff to judgment. Rather, the decision of whether to enter default judgment is left to the Court's discretion." United States v. Pettit, No. CIV.A.99-4407-T, 2000 WL 1781899 at *1 (E.D.Pa. Nov. 13, 2000) (summarizing Petrucelli v. Bohringer & Ratzinger, 46 F.3d 1298, 1303 (3d Cir. 1995)). A factor guiding the Court in determining whether judgment should be entered is whether material issues of fact are at issue. Id.

(citing 10A Charles Alan Wright et al., Federal Practice and Procedure § 2685, at 32-41 (3d ed. 1998) and discussing factors relevant to entry of default judgment). Plaintiff's inconsistent allegations illustrate that a material issue of fact is present. In its Complaint, Plaintiff refers collectively to Defendants as "KAMIKAZE KIDS" and alleges that "KAMIKAZE KIDS" owe Plaintiff the outstanding balance of the consignment accounts. Now, however, Plaintiff demands the entry of judgment for the outstanding consignment accounts against only Kamikaze Kids, Inc. Based on Plaintiff's inconsistent allegations and the ambiguous relationship between the two Defendants, the Court will not grant default judgment at this time.

AND IT IS SO ORDERED.

Clarence C. Newcomer, S.J.